BEFORE HIS MAJESTY IN COUNCIL.

FROM PRINCE EDWARD ISLAND.

APPEAL

BETWEEN

EDMUND WATERS, . . . Appellant.

AND

JOHN YOUNG & WILLIAM YOUNG, Respondents.

APPENDIX TO THE CASE OF THE RESPONDENTS.

B.R.A.
328

R. S. ATCHESON,
For the Respondents.

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BEFORE HIS MAJESTY IN COUNCIL.

ON APPEAL FROM PRINCE EDWARD ISLAND,

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AND

JOHN YOUNG and WILLIAM YOUNG, . Respondents.

APPENDIX TO THE CASE OF THE RESPONDENTS.

No. I.

COPY OF WARRANT OF ATTORNEY FROM MR. FADE GOFF, THE APPELLANT'S AGENT, TO THE RESPONDENTS, AS A SECURITY TO THEM FOR THE DEBT DUE FROM THE APPELLANT, DATED OCTOBER 29, 1817.

To JOHN LOBBAN and CHARLES SERANI, Gentlemen, Attorneys of His Majesty's Supreme Court of Judicature of Prince Edward Island, or to any other Attorney of the same Court.

THESE are to desire and authorize you, the Attorneys above named, or any other Attorney of the Supreme Court aforesaid, to appear for me, Edmund Waters, of London, Merchant, in the said court, as of this present Michaelmas Term, or any subsequent term, and then and there to receive a declaration for me in an action of debt, for the sum of two thousand eight hundred and seventy-seven pounds, five shillings, and sixpence, lawful money of the said Island, for money borrowed at the suit of John Young and William Young, of Halifax, (Nova Scotia), Merchants, and thereupon to confess the said action, or else to suffer judgment by "Nil dicit non sum informatus," or otherwise, to pass against us in the said action, and to be thereupon entered up of record against me in the said court, for the said sum of two thousand eight hundred and seventy-seven pounds, five shillings, and sixpence, of money aforesaid, besides costs of suit, or for what you or any of you shall do, or cause to be done in the said premises or any of them, this shall be to you or any of you a sufficient warrant and authority. In witness whereof I have hereunto set my hand and seal, this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and seventeen.

(Signed) EDMUND WATERS,
By FADE GOFF, his Attorney. (L. S.)

Sealed and delivered in presence of
(Signed) WILLIAM JOHNSTON.

This Warrant of Attorney is given and intended to secure unto the within named John Young and William Young, the payment of the sum of one thousand four hundred and thirty-eight pounds, twelve shillings, and nine-pence currency, with interest; and no execution is to be issued upon the judgment to be entered up on the said Warrant of Attorney, unless default shall be made in the payment of the said sum and interest on or before the first day of November next; and in case default shall be made on the said day, execution shall and may be issued and levied only on the real estate of me, the said Edmund Waters. In witness whereof I have hereunto set my hand and seal, this twenty-ninth day of October, one thousand eight hundred and seventeen.

(Signed) EDMUND WATERS,
By FADE GOFF, his Attorney. (L.S.)

Witness,
(Signed) WILLIAM JOHNSTON.

No. II.

COPY OF THE AFFIDAVIT OF JOHN STEWART, ESQUIRE, THE APPELLANT'S AGENT, SWORN 4th JULY, 1822.

In the Supreme Court.

JOHN YOUNG and WILLIAM YOUNG, . . . Plaintiffs,

AND

EDMUND WATERS, ... Defendant.

JOHN STEWART, of Charlotte Town, Esquire, the Agent of the above named Defendant Edmund Waters, residing in Great Britain, maketh oath and saith, that Fade Goff, of Charlotte Town, late Agent of the said defendant in Prince Edward Island and other British settlements in North America, in or about the year one thousand eight hundred and thirteen, entered into certain mercantile transactions with the above named John Young, one of the plaintiffs above named, and copartner in trade with the above named plaintiff William Young, carrying on trade together in Halifax, Nova Scotia, under the firm of John Young and Company; and that in consequence thereof, as it appears to this deponent, he, the said Fade Goff, did transmit and deliver to the said plaintiffs certain goods and merchandizes of the said defendant Edmund Waters, and Alexander Birnie, his co-partner in trade in Prince Edward Island, to be sold and disposed of by the said plaintiffs, for and on account of the said defendant and his said copartner; and it appears by the books kept by the said Fade Goff, that the said plaintiffs delivered to him the said Fade Goff, chiefly upon the credit of the said last mentioned goods and merchandizes, as this deponent has heard and believes, other goods and merchandizes of the said plaintiffs, to be sold and disposed of by the said Fade Goff; and that the said plaintiffs and the said Fade Goff, in the month of October, in the year of our Lord 1817, came to an account respecting the said transactions, and upon a balance of the said account, there was then found due and owing to the said plaintiffs the sum of £1438 12*s.* 9*d.*, or thereabouts: And the said Fade Goff being at that time unable forthwith to pay the said balance or sum of £1438 12*s.* 9*d.*, or any part thereof, the said Fade Goff by Warrant of Attorney, to which he put the name and seal of the said Edmund Waters, the above named defendant, on the 29th day of October in the year of our Lord 1817, authorized the Attornies therein named as of the present Michaelmas term or any subsequent term, to confess a judgment against him the said defendant in an action of debt at the suit of the said plaintiffs, for the sum of £2877 5*s.* 6*d.* lawful money of the said Island, with a defeasance thereunto written on payment unto the said plaintiffs of the said sum of £1438 12*s.* 9*d.* currency, with interest, on or before the first day of November then next; upon which Warrant of Attorney judgment was accordingly entered up on the 30th day of March, in the year of our Lord 1818; and upon which judgment a writ of Fieri facias was duly issued the 31st day of July in the year of our Lord 1820, and executed upon the lands and tenements of the said defendant in Prince Edward Island: but whereupon no sale hath been effected pursuant to the said judgment and execution, as upon reference to the said Warrant of Attorney filed in the office of the Prothonotary of the said Supreme Court, and the judgment thereon, doth appear.

And this deponent further saith, that he hath carefully examined and perused the Power of Attorney of the said Fade Goff, under the hand and seal of the said defendant Edmund Waters, and is advised, and verily believes, that the said Fade Goff had no authority thereunder, or under any power given to the said Fade Goff by the said defendant and his said copartner, to purchase the goods, wares, and merchandizes of the said John Young and William Young, or either of them, or any other person whomsoever, for and on account of the said defendant Edmund Waters, and Alexander Birnie his copartner as aforesaid, or to execute the aforesaid Warrant of Attorney, nor to sell or dispose of the goods, wares, and merchandizes of the said Edmund Waters and Alexander Birnie to the said plaintiffs John Young and William Young, for any other consideration than money or good bills of exchange; and that he had no power, under the said Power of Attorney, to send the said goods, or any other the property of the said defendant, or of the said defendant and his said copartner, out of this island for sale, on their account and at their risk.

(Signed) J. STEWART.

Sworn in Court, this fourth
day of July, 1822.

(Signed) FADE GOFF, C. C.

Whereupon it is ordered, that the judgment signed in this cause, and the execution issued, and all proceedings thereunder, be set aside; and the Warrant of Attorney, under the hand and seal of the said defendant, by Fade Goff his then agent, be taken off the file to be cancelled, with costs to be taxed by the said court, unless cause be shown to the contrary in four days next after the service of this rule; and that in the meantime all proceedings be stayed.

By the Court.

FADE GOFF, C. C.

No. III.

COPY OF THE AFFIDAFIT OF FADE GOFF, ESQ. THE APPELLANT'S AGENT, SWORN 4th JULY, 1822, AND PAPER WRITINGS THEREIN REFERRED TO.

And now at this day, that is to say, on the sixth day of July, in the same term, comes the said John Young and William Young, by William Johnston, their attorney, and bring into the said Court of our said Lord the King the affidavit of Fade Goff, of Charlotte Town, Esquire, which follows in these terms, to wit:

In the Supreme Court,
Prince Edward Island.

JOHN YOUNG and WILLIAM YOUNG, ... Plaintiffs.

VERSUS

EDMUND WATERS, ... Defendant.

FADE GOFF, of Charlotte Town, in the Island of Prince Edward, Esquire, maketh oath and saith, That the defendant in this cause was, in the year one thousand eight hundred and sixteen, and for several years previous thereto, a partner in trade with Alexander Birnie of London, in that part of the United Kingdom of Great Britain and Ireland called England, merchant; and that the said defendant and the said Alexander Birnie carried on business together under the firm of Alexander Birnie and Company in London, and of Waters and Birnie in Charlotte Town aforesaid: That on or about the fifth day of June in the said year, the deponent received a Power of Attorney from the said defendant, a true and exact copy whereof is hereto annexed, marked A, by which he, this deponent, was empowered to act as his agent, and to transact, manage, and conduct his business in America, as therein set forth; and at the same time the deponent also received another Power of Attorney from the said defendant and the said Alexander Birnie, jointly executed by them, which hath been filed in this court, in the cause of the said plaintiffs against the said Edmund Waters and Alexander Birnie: that the said powers were inclosed in a letter to this deponent, bearing date, London, April the ninth, in the year aforesaid, from the said Alexander Birnie and Company, a true copy whereof is also annexed hereto, marked C, No. I.: That agreeably to the instructions contained in the said letter, this deponent did publicly advertize his said appointment by handbills (no newspaper being at that time published on the said island,) and having transmitted one of the said handbills to the editor of the Nova Scotia Gazette, for insertion three times therein, he inclosed another of the same in his first letter, dated the 14th of June, 1816, to the said A. Birnie and Company, to the terms and purport of which said handbill the said A. Birnie and Company have at no time objected or made any remarks thereon to the deponent; a copy of the same is annexed hereto, marked B: That this deponent accepted the said Agency, and consented to act under the said power, with the idea and belief that he was not merely to wind up and close the concerns of the said Waters and Birnie on the said island, but was to carry on with their funds, and on their account, a moderate trade, such as their previous agents had been employed to conduct: That the grounds of this belief were the communications of George Birnie, the transactions of William Pleace, the ordinary course of business here, the tenor of the said letter accompanying the said powers, and with a view to which the said handbill was framed by this deponent, and, subsequently, the silence and apparent assent of the said A. Birnie and Company to the various and earnest representations of this deponent: That George Birnie, now of London, gentleman, is the son of the said Alexander Birnie, and acted for several years prior to the year 1813 in the said Island of Prince Edward, as the Agent of the said Waters and Birnie: That, on his return to England, he took part and assisted in the management of such business as the said A. Birnie and Company were then prosecuting, and attended regularly, as this deponent does verily believe, in their counting-house, and hath since become, as this deponent hath been informed and verily believes, a partner in trade with his said father: That the said A. Birnie and Company mentioned in their said letter of the ninth of April, 1816, that they had given the deponent the said appointment on the strong recommendations of the said George Birnie: That this deponent did therefore consider the representations of the said George Birnie as proceeding in fact from the said A. Birnie and Company, and with their sanction or approval: That the said George Birnie, by the whole tenor of his language and declarations, did occasion and confirm this deponent's belief of the views and intentions of the said A. Birnie and Company as aforesaid; and that the said George Birnie, while on the said Island, did transact and do business to a great extent for the said Waters and Birnie, by buying and selling, drawing bills, contracting debts, consigning British manufactured goods for sale to Quebec and Halifax, and property to these and other distant markets, and settling accounts, in all respects as merchants are accustomed to do in the said Island.

That sometime in the year 1813, William Pleace, now of Charlotte Town aforesaid, Esq. arrived in the said Island of Prince Edward from London, with powers and authority from the said defendant, and from the said A. Birnie and Company, to be their Agent and Attorney; and that the saidWilliam Pleace did accordingly, from

the said year, 1813, till the month of June, 1816, conduct and manage the affairs of the said Waters and Birnie on the same principle as the said George Birnie as aforesaid: That among other transactions the said William Pleace stated to the deponent, that he had imported from Halifax, during the period of his said Agency, property to the amount of £6,000 and upwards, upon the sale of which he considered that a large profit had been realized towards supporting the establishment of the said Waters and Birnie: That at the time this deponent undertook the said Agency, about £700 was owing to the firm of Moody and Boyle in Halifax, by reason of the said importations; and the said William Pleace also acquainted the deponent, that from five to seven hundred pounds was then outstanding of new balances, meaning thereby credits then lately granted to various persons by the said William Pleace as agent as aforesaid: That this deponent announced all these facts to the said A. Birnie and Company, in his said letter, bearing date, June 14th, 1816: That the said A. Birnie and Company, in their reply, dated London, November the 8th, in the same year, and continued to April the 7th, 1817, acknowledged the receipt of the said letter, and so far from expressing any disapprobation of the said proceedings of the said William Pleace, remarked this,—"His (meaning the said William Pleace's) charge for salary is right, and if he is equally so in profit upon his Halifax purchases, it will be well." And the said debt of £700 so due as aforesaid was subsequently paid out of the funds of the said Waters and Birnie; and the said new balances, meaning thereby the said credits granted to various persons by the said William Pleace as agent aforesaid, were charged to the said persons so credited by him as aforesaid in the books of account of the said Waters and Birnie, and being included by the said William Pleace in his schedule of debts owing to the said Waters and Birnie, was partly recovered by this deponent, as their agent as aforesaid. And this deponent further saith, that the said William Pleace, during his said Agency, did consign property belonging to the said Waters and Birnie for sale to Halifax aforesaid. And this deponent doth further say, that the Power of Attorney granted by the said Edmund Waters to the said William Pleace, and whereof a true copy is hereunto annexed, marked D, does not confer upon the said William Pleace a more extensive or ample authority as regards the transacting of business, the consigning of property to distant markets, the granting of credits, or the contracting of debts, or in any other respect, than the aforesaid Power of Attorney, marked A, did confer upon this deponent. This deponent further saith, that unless he was intended to do business for the said Waters and Birnie, and to be adequately remunerated therefor, as the said William Pleace had been, and if he was to have been solely engaged in collecting the debts and selling the last refuse of the very extensive importations of British merchandize which had been made by the said Waters and Birnie, and to be paid only by a small commission on such sales and collections, the said Agency would have been a situation highly irksome, unprofitable, and laborious, and the said deponent most certainly would have hesitated to accept it; whereas the said George Birnie did represent and hold it forth as a lucrative and desirable employment, as it had been to the said William Pleace, and if the views of the said Edmund Waters and of his said Partner were changed, this deponent had a right to expect a prompt and explicit declaration thereof, and would have acted accordingly. But the said A. Birnie and Company, in their said letter annexed hereto, and marked C, No. 1, expressed themselves in an ambiguous hesitating manner, which led this deponent to believe, that they, the said Edmund Waters and Alexander Birnie had not abandoned the design of carrying on business as heretofore; and, accordingly, in various letters from this deponent, he did repeatedly and earnestly urge and solicit the said A. Birnie and Company for precise instructions: That extracts, taken from exact copies of these letters, with the dates thereof, are in a paper annexed hereto, and marked E: That this deponent doth verily believe that the said A. Birnie and Company did duly receive all his said letters within a reasonable time from the respective dates thereof: That the said A. Birnie and Company, in a letter, dated November 8th, 1816, continued on the 7th April, 1817, and which was received by this deponent about the end of May in the said year, 1817, did acknowledge the receipt of this deponent's respective letters of the 14th June, 1st, 8th, and 12th of July, and 10th of September, 1816, under the titles of No. 1 to 5,—the said letters having been so numbered: That this deponent's next letter, dated from Halifax, October the 5th, 1816, enclosed a bill of exchange, drawn by Peter M'Auslane on David Rennie, Esq. Scotland, for £124 Sterling, which William Johnston of Charlotte Town, aforesaid, Esq. informed this deponent, the said Alexander Birnie did personally acknowledge to him, the said William Johnston, to have received: That the said letter of October the fifth was alluded to in the first paragraph of a subsequent letter, addressed by this deponent to the said A. Birnie and Company, and dated at Charlotte Town, December the 5th, 1816; and that another letter of the said deponent's, dated 26th November, 1816, was inclosed in, and did accompany his said letter of December the 5th: That an inquiry and remark on the deficiencies of certain furniture consigned by this deponent, as agent as aforesaid to the plaintiff in this cause at Halifax, and which said inquiry and remark was contained only in his said letter of December 5, were alluded and replied to in their said letter of November 8th, 1816, continued to April 7th, 1817: That the said A. Birnie and Company, in their next letter, dated London, July 31st, 1817, did acknowledge to have received a subsequent letter of this deponent, dated Charlotte Town, May the 31st, 1817, in which said letter this deponent did inclose and transmit another, dated May the 23rd, 1817, and addressed to the said Waters. This deponent doth therefore believe as aforesaid, that all his said letters were duly received by the said A. Birnie and Company; and he doth say that it was the duty of the said Edmund Waters, as his principal, for the deponent's sake, as well as from a regard to his own interest and security, if it was obvious from his the deponent's said letters, that he had mistaken the intentions of the said defendant and his said partner, and was acting contrary to the spirit of his instructions, to have undeceived him, the said deponent, promptly and clearly, and to have suggested such other steps and measures as were agreeable to the wishes of the said defendant and his said partner; whereas this deponent doth further say, that notwithstanding the date and frequency of his said letters, containing the said extracted passages annexed hereto, the said letter of the said A. Birnie and Company, professing to have been commenced on the 8th November, 1816, continued on the 7th April, 1817, and received by the deponent about the end of May thereafter, was the first answer to his said letters written by the said A. Birnie and Company, or which reached this deponent. That even in that letter, whereof a copy is annexed hereto and marked C, No. 2, no specific explanation of the views of the said A. Birnie and Company is set forth; and the very expression which they use in the only paragraph relating to the subject, to wit, "We cannot persuade ourselves it would answer any good end to send out any goods *this* spring," left room for a fair implication that they might send out goods for the purpose of trading that Autumn, or in an after season; and that their intention of carrying on further trade was only suspended, not abandoned. And this deponent further saith, that the said A. Birnie and Company, in their letter to him, dated London, April 8th, 1818, and whereof a copy is hereto annexed, marked C, No. 3, did, for the first time, signify their determination not to continue their trade to the said Island: That the said A. Birnie and Company were in the meanwhile duly apprised of

all his proceedings, as their and the defendant's said Agent; and in particular of the transactions out of which the claim of the plaintiffs in this cause arose; and that the said A. Birnie and Company, or the said defendant, never expressed to this deponent any disapprobation thereat.

And this deponent further saith, that on undertaking the said Agency he received from the said William Pleace the stock on hand, of which the estimated value was about £6,000 currency, and which this deponent took into his possession; but he did not narrowly examine the same, nor did he ever at any time open some of the packages in which part of the said goods or stock, and in particular certain articles of furniture, were contained. That the said stock did consist chiefly of the remains of most extensive importations for the seven preceding years, amounting to upwards of £80,000 sterling; and the greater part of which said remains, or stock, was quite unsaleable on this island: the articles were mostly unfashionable, and such as were not usually consumed by the inhabitants of this island. This deponent doth therefore verily believe, that many of them could not have been sold on the said island for ready money, at one third part of their estimated cost; and that no person worthy of credit would have bought at a price at all adequate to the value at which they were stated. This deponent having made himself acquainted with these facts, and being sincerely desirous to promote the interests of the said defendant and his said partner, did therefore determine to consign part of the said stock to the plaintiffs in this cause, then carrying on business in Halifax, Nova Scotia, under the firm of John Young and Company, being led to believe that the said goods, which consisted mostly of silks, fine kerseymeres, silk velvets, a peculiar kind of indigo, and rich noyau, would sell to better advantage in that more extensive market than in Charlotte Town. The invoice of the whole consignment amounted to £1179 5*s.* 8*d.* currency. This deponent notified the said A. Birnie and Company, that he had so consigned the said goods, in his letter to them of the 10th September, 1816, and that he had forwarded the same for the purpose of exchanging them for articles saleable in this market; that they had all arrived safe at Halifax, and that he, this deponent, purposed following them in a few days from the date of the said letter, and doing all he could for the interest of the said defendant and his said partner. Accordingly this deponent did proceed to Halifax, and there purchased various goods to a considerable amount from the said plaintiffs in this cause; as also certain sugars and rum from the house of Moody and Boyle, before the packages containing the said goods, so consigned as aforesaid, had been opened at Halifax, or any sales effected of the same. This deponent bought the said merchandize from the plaintiffs, in the belief that the proceeds of the sales of the said consignment, with such partial remittances as he could easily make from Charlotte Town, would pay off and liquidate the said debt so contracted with the said plaintiffs; and that in effect he was merely exchanging one class of property for another, highly to the benefit of the concern, and in strict accordance, as this deponent had every reason to believe, with the interest and views of the said defendant and his said partner. And this deponent doth farther say, that had the goods so consigned been sound and of fair quality, and had the sales met the just expectations of the said deponent, the balance of £574 6*s.*, at this day due to the plaintiffs in this cause, would not have existed; and that the same does therefore wholly arise from the disappointment experienced in the said sales, for on opening the said goods at Halifax, as this deponent has been informed and verily believes, the kerseymeres and silks were found to be materially stained, and injured by moths and damps, the consequence of long keeping; the indigo was pronounced of a kind little used in Nova Scotia, therefore of slow and precarious sale; and the noyau, although of excellent quality, was invoiced at a price extravagantly dear. The said John and William Young, the plaintiffs in this cause, had promised the deponent that they would spare no exertion to make the most of those goods; and this deponent hath been informed and doth very believe, that the said plaintiffs tried them at various times at public and private sale, after this deponent had left Halifax with his said purchases from the said plaintiffs; and that for such of them as were disposed of towards the close of 1816, and during the year 1817, and afterwards, until the sales were finally closed in August, 1820, the said plaintiffs did obtain the best prices which could be had or gotten for the same, and which were duly carried by them to the credit of the said Waters and Birnie, in pursuance of their original promise and agreement with this deponent; besides, certain furniture in cases as aforesaid, which was represented in Mr. Pleace's invoice to this deponent, and by this deponent to the said plaintiffs, as of great value and of a rich and fashionable finish, turned out, on being examined at Halifax, as this deponent has been informed and believes, to be old, partly broken, and deficient in quantity; consequently the sales of this one article alone fell far short of the sum which this deponent, when he made the said purchase from the said plaintiffs, had a right to expect. And this deponent doth further say, that he acquainted the said A. Birnie and Company with the said purchase and transactions in his said letter aforementioned, dated at Halifax, October the 5th, 1816; that he alluded to the same again in his letter of December the 5th, in the same year: that in another letter, bearing date Charlotte Town, December the 12th, 1817, he regretted that he had not been able to make such remittances to Halifax, for the goods had from thence, as he could have wished, and had to make up a considerable balance therefore in the spring; that the said letter was acknowledged to be received by the said A. Birnie and Company, in their letter annexed hereto, and marked C, No. 3., and dated April the 8th, 1818. That this deponent did besides, in a letter to George Birnie, dated Charlotte Town, September the 15th, 1817, state that there was much difficulty in making remittances to Halifax for goods received the previous fall (or autumn); and in another letter also to him, dated Charlotte Town, July the 18th, 1818, this deponent mentioned the loss incurred on the sales of the said consignment, and that the noyau and indigo remained still on hand; and further, that balances were due on the goods received from Halifax, which would take a length of time to extinguish. All the paragraphs from the several letters are accurately copied into the annexed paper marked E.

And this deponent further saith that William Young, one of the plaintiffs in this cause, came in the end of October, 1817, to Charlotte Town, when the sales of the consignment up to that time being exhibited, a balance was settled and struck; and the sum of £1438 12*s.* 9*d.* currency was found to be due to the said plaintiffs from the said Waters & Birnie. The said William Young finding that this deponent, as the agent of the defendants, had no tangible funds at that time to meet so heavy a claim, was desirous that the ultimate safety of the debt at least should be secured, he expressed a resolution to have a judgment against the said defendant and his said partner, with that view. And this deponent saith, that he verily believes he could not have opposed any just defence to an action by the said plaintiffs, as the goods sold by them to the said Waters and Birnie had been received and delivered to the use of the said Waters and Birnie: many of them had been sold, and a large part were then in the stores of the said Waters and Birnie. The said plaintiffs must, therefore, have procured a judgment against the said defendant and his said partner, and might have issued execution against the personal estate of the said defendant and his partner, to their great loss and injury. Mr. Charles Stewart, of Prince Town, in the said island, was also at that time

C

prosecuting a claim upon the said Waters and Birnie, and the said William Young was apprehensive lest he the said Charles Stewart might obtain a judgment before himself and his partner, and thus give a priority. Under all these circumstances this deponent granted the warrant of attorney on which the judgment in this cause is founded, with a clause or condition attached thereto, that execution could issue only against the real estate of the said defendant, and on an engagement from the said William Young, that he would not cause judgment to be entered up, until there was room to apprehend, that he the said Charles Stewart might recover. Accordingly, judgment on the said warrant of attorney was not entered up until the 30th day of March, 1818. This deponent, however, still actuated by the same anxiety for the interest of his principals, and unwilling that their credit should suffer on the Island, prevailed on the plaintiffs to defer the levying of their execution, in the hope that this deponent would be able to discharge the whole debt from the moveable property in his hands. Accordingly, this deponent continued to make partial payments, and the goods at Halifax so consigned as aforesaid, of which a large proportion was yet on hand, were still slowly selling, so that in the end of August, 1819, the balance due to the plaintiffs was reduced to £709 10*s.* 9*d.* currency. The plaintiffs had then become extremely impatient for their money, and represented the inconvenience and difficulty to which the want of it subjected them. It was then proposed that a mortgage over a certain part of the property should be given. This arrangement, however, was not carried into effect; and the plaintiffs, having renewed their judgment by Scire Facias, execution was levied, August the 22nd, 1820, on the real estate, to wit, on houses and lands of the said defendant, and of the said Waters and Birnie, for the sum of £600, 14*s.* currency, being the balance then due to the said plaintiffs.

And the said deponent further saith, that during his said agency, to wit, from the month of June, 1816, to July, 1821, when he was superseded by John Stewart of Charlotte Town, Esquire, he, the said deponent did expend a large sum of money in improving, fencing, repairing, and building, on the said houses and lands of the said defendant and of the said Waters and Birnie, and that the said sum did exceed the balance now due to the plaintiffs as aforesaid. And this deponent further saith, that had he not expended the said sum on the houses and lands as aforesaid, he could have applied an adequate share of the said funds so expended to extinguish the debt so due to the said plaintiffs, and that the said houses and lands would consequently have been so much the less valuable at the present day. That this deponent did state the fact on this head in a letter to the said George Birnie, dated Charlotte Town, July 18th, 1818; and all his acts in so improving, fencing, repairing, and building on the said real estate are notified in his various letters to the said A. Birnie and Company, and are sanctioned and approved of by them in express terms, in their letter of the 8th of April, 1818, of which a copy is annexed as aforesaid, and marked C, No. 3.

And this deponent further saith, that at the time he resigned the said agency to the said John Stewart, various sums were due to the said Waters and Birnie for the said goods and merchandize received from the said plaintiffs, which said goods had been credited to various persons by this deponent for behoof of the said Waters and Birnie; that all the said debts were transferred along with the books and other property of the said Waters and Birnie to the said John Stewart, and were received by him as the agent of the said Waters and Birnie, and of the said Edmund Waters; that many of the said debts are good and recoverable, and that they would have been less in number and in value had it not been for the property received from the said plaintiffs, and sold by this deponent for the said Waters and Birnie as aforesaid.

And the said deponent further saith, that although the said letters of this deponent to the said A. Birnie and Company, and to the said George Birnie, and the said defendant, in which the consignment as aforesaid to the plaintiffs, the purchase from them, and the fact that a balance was still due on such purchase are stated, were transmitted by the defendant, and received at the respective dates aforementioned, the said A. Birnie and Company, or the said George Birnie, in no one part of their correspondence expressed any disapprobation or dislike of his said proceedings; but, on the contrary, in a letter from George Birnie to the deponent, dated London, September the 13th, 1817, he says, "They (meaning the said defendant and his partner) leave all matters in dispute or otherwise relative to the concern entirely to your own judgment, trusting that you will adopt such means as may be the most to their advantage." And, further, the said A. Birnie and Company, in their letter aforementioned of the 8th April, 1818, declared, that they had a high opinion of the integrity and assiduity of this deponent: That the deponent acknowledged the said letter of September 13th, 1817, from George Birnie, in a letter to the said A. Birnie and Company, of December 12th, 1817, to which last letter they wrote a reply, on the 8th of April, 1818, as aforesaid, annexed hereto, and marked C, No. 3: That extracts from the said letters of the 13th September, and 12th December 1817, are accurately copied in the paper annexed hereto, and marked F and E.

That the deponent did then, and does now, consider such expressions of the said A. Birnie and Company, and of the said George Birnie, as a virtual and implied approval of his conduct; and the said deponent believes that the disapproval which the said A. Birnie and Company have since expressed of his transactions with the plaintiffs is in truth an after-thought; and that it was suggested, not by any glaring misconduct of this deponent, nor by the original impulse of their own minds, but with the hope and design to shift off their own shoulders the payment of a debt contracted for goods which were applied to their use, and which were had and received by the deponent, with the best intentions on his part as the agent, and for the interest and behoof of the said defendant and his said partner.

And the deponent, lastly, saith, that the said consignment to the said plaintiffs, and the said purchases from them, were made by him for the sole interest and behoof of the said Waters and Birnie, and that all invoices and accounts to and from the said plaintiffs connected with the said transactions were always from the first communication thereof in the names of the said Waters and Birnie, and not in the individual name of this deponent.

(Signed) FADE GOFF.

Sworn in Court this 4th day of July, 1822, before
(Signed) THOMAS TREMLETT,
Ch. Justice.

A.

COPY OF THE APPELLANT'S POWER OF ATTORNEY TO MR. FADE GOFF, REFERED TO IN THE PRECEDING AFFIDAVIT.

To all to whom these presents shall come, I, Edmund Waters, of Great St. Helens, Bishopsgate Street, in the City of London, merchant, send greeting: Whereas I the said Edmund Waters did, by a certain writing or power of attorney, under my hand and seal, bearing date the 9th day of September, 1814, nominate William Pleace, of the City of London, Gentleman, but then residing in Charlotte Town, in Prince Edward Island, in the Gulf of St. Lawrence, in North America, to be my true and lawful Attorney, for me, and in my name, or in his own name, or otherwise to make up, settle, and adjust all accounts then depending and unsettled between me and any person or persons whomsoever, either in Prince Edward Island or any other British settlement in North America, and to ask, demand, sue for, recover, and receive the balances that may be found due thereon; and also to ask demand, sue for, recover, obtain, and receive, all and every debt and debts, sum, and sums of money whatsoever, that were then due, or should at any time thereafter become due, or owing to me, from any person or persons whomsoever in Prince Edward Island, or any other British settlement in North America, whom it did, might, or should concern, or who should be liable to pay on account for the same; and in case of nonpayment thereof, or of any part thereof, for me, and in my name, or in his own name or otherwise, to sue and attach, prosecute, implead, or otherwise proceed against all and every person and persons whomsoever as aforesaid, in any court or courts of law or equity in Prince Edward Island, or any other British settlement in North America, when it might be necessary, and to proceed to judgment and execution therein or otherwise, according to the form and usual course of practice of such courts or tribunals; and also for me, and in my name, to appear, and my person to represent and personate in all courts, and before all ministers, judges, and magistrates, and otherwise as might be necessary, and as to my said Attorney should seem meet, and on payment or receipt of any such debts, sum, and sums of money, or any of them, or any part thereof respectively, for me, and in my name, or otherwise, to make, sign, seal, execute, and give all and singular good and sufficient receipts, releases, acquittances, and discharges as might be necessary in the premises, or as might be required. And in case any dispute or difference should arise, touching the payment of any of the said debts, sum, or sums of money, or any of them, or any part thereof, or touching the settlement of any account or accounts relating thereto, or in the execution of the powers and authorities thereby given, I did thereby authorize and empower my said Attorney to refer any such dispute or difference to arbitration in the usual way, and to sign, seal, execute, and deliver any agreement, bond, or other instrument of reference, and to abide by and perform the award and determination which might be made in pursuance thereof, and to compel the observance and performance of such award and determination by the other parties thereto respectively; and if expedient and necessary to accept and take a security or securities, for any of the said debt or debts, by instalments, and in cash, goods, bills of exchange, or other mode of payment, or to compound for and take less than the full amount of such of the said debt or debts whereof full payments could not be obtained. And generally to transact, manage, conduct, and execute, all and any such further and other lawful acts, deeds, matters, and things, as the said William Pleace should find needful and necessary for accomplishing all, any, or either of the purposes aforesaid, and that as fully and effectually, to all intents and purposes, as I could do in my own person; thereby giving unto my said Attorney all my full and whole power and authority in the premises, and thereby ratifying and confirming all and whatsoever my said Attorney should lawfully do or cause to be done in and about the premises, in execution thereof, as in and by the said paper-writing, or power of attorney, relation being thereunto had, will appear. Now know ye, that I, the said Edmund Waters, for divers good causes and considerations me thereunto moving, have revoked, recalled, and countermanded, and by these presents do revoke, recal, and countermand, and to all intents and purposes, (as far as in me lieth) make null, void, and of no effect, the said recited writing or power of attorney, and all powers and authorities therein and thereby, or in and by any other deed or writing made, granted, or given, and all other things therein or in any or either of them contained; and do hereby make void and disclaim all acts, matters, and proceedings, which shall or may at any time hereafter be acted, done, or performed, by virtue or means thereof in any manner of way.

And further know ye, that I, the said Edmund Waters, have made, ordained, nominated, constituted, and appointed, and by these presents do make, ordain, nominate, constitute and appoint, and in my place and stead put and depute Fade Goff, of Charlotte Town, in Prince Edward Island, in the Gulf of St. Lawrence, North America, merchant, to be my true and lawful Attorney, for me and in my name, or in his own name or otherwise, to make up, settle, and adjust, all accounts now depending and unsettled between me and any person or persons whomsoever, either in Prince Edward Island or any other British settlement in North America, and to ask, demand, sue for, recover, and receive the balances to be found due thereon; and also to ask, demand, sue for, recover, obtain, and receive, all and every debt and debts, sum and sums of money whatsoever, that are now due, or shall at any time hereafter become due, or owing to me, from any person or persons whomsoever in Prince Edward Island, or any other British settlement in North America, whom it doth, may, or shall concern, or who shall be liable to pay or account for the same; and in case of non-payment thereof, or of any part thereof, for me and in my name, or in his own name or otherwise, to sue, arrest, attack, prosecute, implead, or otherwise proceed against all and every person and persons whomsoever as aforesaid, in any court or courts of law or equity in Prince Edward Island, or any other British settlement in North America, where it may be necessary, and to proceed to judgment and execution therein or otherwise, according to the form and usual course of practice of such courts or tribunals; and also for me and in my name or otherwise to appear, and my person to represent and personate in all courts, and before all ministers, judges, and magistrates, and otherwise, as may be necessary, and as to my said Attorney shall seem meet, and on payment or receipt of any such debts, sum and sums of money, or any of them, or any part thereof respectively, for me and in my name or otherwise, to make, sign, seal, execute, and give, all and singular, good and sufficient receipts, releases, acquittances, and other discharges, as may be necessary in the premises or as may be required. And in case any dispute or difference shall arise, touching the payment of any of the said debts, sum or sums of money, or any of them, or any part thereof, or touching the settlement of any account or accounts relating thereto, or in the execution of the powers and authorities hereby given, I do hereby authorize and empower my said Attorney to refer any such dispute or differ-

ence to arbitration in the usual way, and to sign, seal, execute, and deliver any agreement, bond, or other instrument of reference, and to abide by and perform the award and determination which may be made in pursuance thereof, and to compel the observance and performance of such award and determination by the other parties thereto respectively; and, if expedient and necessary, to accept and take a security or securities for any of the said debt or debts, by instalments, and in cash, goods, bills of exchange, or other mode of payment, or to compound for and take less than the full amount of such of the said debt or debts whereof full payment cannot be obtained. And generally to transact, manage, conduct, and execute, all and every such further and other lawful acts, deeds, matters, and things, as the said Fade Goff shall find needful and necessary for accomplishing all, any, or either of the purposes aforesaid, and that as fully and effectually, to all intents and purposes, as I could do in my own person, hereby giving unto my said Attorney all my full and whole power and authority in the premises, and hereby ratifying and confirming all and whatsoever my said Attorney shall lawfully do, or cause to be done, in and about the premises, by virtue and in execution of these presents. In witness whereof, I, the said Edmund Waters, have hereunto set my hand and seal, the ninth day of April, in the fifty-sixth year of the reign of our Sovereign Lord, George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord eighteen hundred and sixteen.

(Signed) E. WATERS, L. S

Sealed and delivered, being first duly stamped, in the presence of

(Signed) GEO. BIRNIE,
Great St. Helens.

B.

COPY OF THE HAND-BILL REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. GOFF

NOTICE.

Messrs. Edmund Waters and Alexander Birnie, of London, carrying on trade in Charlotte Town, Prince Edward Island, under the firm of Waters and Birnie, having respectively, by Powers of Attorney, dated at London, 9th April last, appointed the subscriber their Agent in North America, *to transact all business of their concern in the room of Mr. William Pleace*, the Public are hereby notified thereof; and all persons indebted to the said firm, or to said Edmund Waters, either by bond, note, book debt, rent, or otherwise, are requested to discharge the same without delay to the Subscriber; and those who may have any claims will present them for adjustment and liquidation.

(Signed) FADE GOFF,
Agent to Waters and Birnie, and Edmund Waters.

Charlotte Town, Prince Edward Island,
June 5th, 1816.

C, No. 1.

COPY OF A LETTER FROM MESSRS. ALEXANDER BIRNIE & CO. TO MR. FADE GOFF, DATED 9th APRIL, 1816, REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. GOFF.

Mr. Fade Goff,
Charlotte Town, Prince Edward Island.

London, 12, Great St. Helens,
April 9th, 1816.

SIR,

IN consequence of the irregularity and extreme want of attention which we have experienced from Mr. William Pleace, our present Agent at Prince Edward Island, and by which our interest has most materially suffered, from his having acted contrary to our positive instructions and *his written agreement*, we have made up our minds to remove him altogether from our employ.

Mr. John Stewart, of Newfoundland, and Mr. George Birnie, of this town, having strongly recommended you to us AS A FIT AND PROPER PERSON *to manage our business; and assuring us, that in their opinion you would have no objection to take upon you the superintendence thereof, have enclosed you our joint power*, (and also our Mr. Waters, to recover what debts may be due to him individually,) *in order to enable you to supersede Mr. William Pleace, our present Agent on the Island, or any other part of North America.*

It may be necessary to suggest, as your first step towards carrying our intentions into effect, to have the powers privately registered, in order to prevent cabal and intrigue. *You will afterwards take possession of our premises, on which you* SHOULD REMAIN; and take, with the assistance of Mr. William Pleace, a complete in-

ventory of all the stock in trade, furniture, books, bills, and cash, with the iron chest and two keys; but should he decline performing his duty, you will immediately procure two respectable storekeepers, who will with yourself take an *exact account* of every article on the premises; and at the end of the said inventory cause an affidavit to be attached, sworn to by those who took the same, taking care to transmit us an attested copy thereof. You will also observe to let all persons know, indebted to the concern jointly or severally, on account of rent, goods, or otherwise, not to pay any one but yourself. You will also cause to be inserted three times in the island newspaper and Halifax Gazette, stating that Mr. William Pleace no longer acts as Agent to the house of Birnie and Company, of London, or of Charlotte Town, Prince Edward Island; and also notify any person with whom he may have transacted business at Halifax, Newfoundland, and other places, of the same in writing.

As we have not received a regular state of our affairs from Mr. William Pleace, we are at a loss *as to our future mode of transacting business at the island*, but in the mean time propose to allow you 5 per cent. on the amount of all outstanding debts recovered, and also 5 per cent. on the amount of sales of goods on hand, which we wish you to dispose of to the best advantage, for ready money, and remit it, together with such debts as may be recovered, in Government bills, which we apprehend may be got at Halifax; but should you remit cash, you will advise us thereof for our government as to insurance. *You will occupy the dwelling attached to the store (observing the furniture is kept in order)* until such time as we have determined what is to be done with the same, as we understand the upper part of the store can be easily converted into a dwelling house, and the under part of the store being considered as quite sufficient to carry on a trade adequate to the funds of the island

As this is the only arrangement we can at present make, from our imperfect knowledge of the state of the concern, and as we hope it will not materially interfere with your present engagements, we trust you will think it an object worth exerting yourself for our interest. As our books were made up to the commencement of Mr. Pleace's responsibility, we have no doubt but he will consider it his interest and duty to deliver them so made up to the commencement of yours. You will write us by every conveyance, giving us an account of your proceedings for our government; and also let us know the stock on hand, debts and credits, state of repair of the houses; in short, every information you consider necessary for our interest. Referring to our next, we remain, Sir, your most obedient humble servants,

(Signed) A. BIRNIE & CO.

P.S. Mr. Townshend's Agent here has paid us £150 on his account. Enclosed you have a protested bill, drawn by Grosvenor, for £10, which you will recover. We have a number of half Bank of England notes remitted by Mr. Pleace; we wish you to state whether the remaining halves were ever sent us, and by what conveyance.

Messrs. Alexander Birnie and Company's next letter, dated London, May 7, 1816, merely refers to the above communication of the 9th April, and refers to c[illegible] accounts and transactions between them and Mr. Charles Stewart, as also Mr. Holland; there appears, the[illegible].e, no necessity for copying it here.

C, No. 2.

COPY OF A LETTER FROM MESSRS. ALEXANDER BIRNIE & CO. TO MR FADE GOFF, DATED 8th NOVEMBER, 1816, REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. GOFF.

12, Great St. Helens, London,
November 8, 1816

Dear Sir,

Since our last, by the June packet, enclosing accounts current with Mr. Stewart, (being the above letters of May 7, 1816, F. G.) we are favoured with your letters, No. 5 inclusive.

We are glad to hear that you found so little difficulty in getting possession of our property on hand, and hope Mr. Pleace will be able to furnish you with a satisfactory account of money matters. His charge for salary is right, and if he is equally so in profits upon his Halifax purchases, it will be well: there will be little charge for European goods during his management. We hope you will thoroughly examine his accounts, as we have not the best opinion of him; his statement of remittances is correct, except £100 drawn by Le Seur, for which he got a bag of dollars, but how much of it was book debts at his commencement, we are not aware. We observe the stock is considerably reduced in value; and as to charges for the schooner Star and her cargo, they far exceed any thing we ever saw: in short, we consider more than half to be fabricated: the cargo of the Simpson is much too high, c[illegible]rged full £20 per cent. more than he gave for it; and we trust you will investigate these matters, particularly the Star.

We hope you have been able to sell all the timber purchased for us at Malpeque, as it is not worth the freight here.

We have received £124 13*s.* on account of Mr. Thomas M'Nutt; also £18, which you will put to the credit of Mr. Peter M'Gowan, and charge us for a horse sent to St. John's, Newfoundland, through the hands of Mr. John Stewart.

With respect to the new brig up the river, we rather think you had better sell her as she is; unless you could complete her hull, with her masts and spars, for about £200, which, if you can do on a certainty, we would

send out sails and rigging sufficient to bring her home, or take her to Newfoundland, and sell her there. The value of ships in this country is reduced nearly ⅓ds: *we shall send you out paint and oil in the spring for the buildings.*

You will settle the best way you can with Mr. Charles Stewart. As to his demand of £15 per cent. on the goods, it is truly ridiculous, when he has not paid for them; that abatement was on condition that they were paid for within the year in cash, or good bills.

(On the same sheet of paper this letter is then continued as follows:)

April 7. 1817. *From the present state of the island with respect to cash payments, we cannot persuade ourselves it would answer any good end to send out any goods this spring.*

We have herewith sent you a copy of our accounts as they stood in the books when delivered up to Mr. Pleace, by which you will see there is a considerable difference in his statement to you, which he must explain.

With respect to the bed furniture you mention as deficient in the packages, it must be with the other furniture in the trunks. The furniture expressed in the inventory to be sent to London was not sent; consequently Mr. Pleace must account for it, being left in his charge, except a feather bed, bolster, and two pillows, and two blankets, which Mr. George Birnie brought home, and they were taken from the new four post bedstead intended to be sent here.

We are favoured with your letter of 7 January last respecting Mr. Pleace's accounts, which want considerable explanation; the particulars of which, together with our determination respecting his charges, shall forward by May packet. Enclosed you have a bill of lading of paint and oil, to give the store two coats outside, and all the other buildings necessary to be preserved. Hoping to hear from you soon with a good remittance, we remain, dear Sir, your most obedient servants,

(Signed) A. BIRNIE & CO.

COPY OF A LETTER FROM MESSRS. ALEXANDER BIRNIE & CO. TO MR. FADE GOFF, DATED 21st JULY, 1817, REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. GOFF.

London, 21st July, 1817.

Dear Sir,

We have this day received from Mr. Edstrom £17 3s 10½d., balance of his account with you, and which we shall place to your credit. Mr. Edstrom states there is some error in the account, which he will settle with you. We are without your favours since that of 31st May last, and are, dear Sir, your well wishers,

(Signed) A. BIRNIE & CO.

Mr. Fade Goff.

C, No. 3.

COPY OF A LETTER FROM MESSRS. ALEXANDER BIRNIE & CO TO MR. FADE GOFF, DATED APRIL 8th, 1818, REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. FADE GOFF.

London, 12, Great St. Helens,
April 8, 1818.

Mr. Fade Goff.

Dear Sir,

We have to acknowledge the receipt of your letters of 12th and 13th December last, and upon due consideration of their contents, are sorry to observe that with respect to continuing our trade to the island, (although we have a high opinion of your integrity and assiduity,) we feel very reluctant in adventuring any more capital, having been already so great sufferers, even after the seeming flattering prospects; consequently we approve very much of your winding up the concern, by which, we trust, you will be enabled to make us some considerable remittances this spring from the stock, and also from the book debts.

We are much surprised to hear that the debts contracted by Pleace, at Halifax, are not liquidated, as we understood the goods had from thence were saleable articles, by which you would realize the amount in a short time, independent of our stock. We did expect that the produce of the sale of timber on hand last year would have come to us, more especially as your Brothers in Ireland informed us you had got bills for a cargo shipped to their place; but of this we were disappointed. With respect to the houses and lands, we are not disposed to sell any of them at present, and we approve much of what you have done for the interest of both, and make no doubt but you will, by your kind attention, make both land and houses productive.

With respect to the store, we are at a loss what to do with it; if you could let it at a low rent to any respectable person, where the rent would be safe, and the premises with the furniture taken care of, we should be glad; or if the Governor would recommend it for a Government House, as we presume it might be easily converted into a respectable residence for the Governor

You say nothing about the vessel up the river; we therefore suppose she is in the same state as formerly; at any rate we wish you to dispose of her on the best terms you can, for ready money, *or produce paid down*. We forwarded yesterday by Captain Forster of the ship Alliance, bound to Charlotte Town, a paper parcel, for which you are to pay him £2 on delivery: it contains all our papers relative to Mr. Cambridge's transactions with Mr. Waters, which will furnish you with ample powers to defeat his pretended claim, if he should be so bold as to pursue the action, which we are led to believe he will not. We are, dear Sir, your obedient servants,

(Signed) A. BIRNIE & CO.

N. B. These are all the letters received by the deponent from A. Birnie and Company, up to this present day, July 4, 1822.

(Signed) P. GOFF.

EXTRACT FROM A LETTER FROM MR. GEORGE BIRNIE TO MR. FADE GOFF, DATED LONDON, DECEMBER [illegible], 1817.

"I believe it to be their (to wit, A. Birnie and Company's) intentions just to jog on with the store, till the present stock is sold and the debts got in."

D.

COPY OF THE APPELLANTS' POWER OF ATTORNEY TO MR. WILLIAM PLEACE, HIS AGENT, DATED 9th SEPTEMBER, 1814.

Know all men by these presents, that I, Edmund Waters, of Great St. Helens, Bishopsgate Street, in the City of London, merchant, for divers good causes and considerations me hereunto moving, have made, ordained, nominated, constituted and appointed, and by these presents do make, ordain, constitute and appoint, and in my place and stead put and depute William Pleace, of the City of London, gentleman, but at present residing in Charlotte Town in Prince Edward Island, in the Gulf of St. Lawrence, in North America, to be my true and lawful Attorney, for me and in my name, or in his own name or otherwise, to make up, settle, and adjust all accounts now depending and unsettled between me and any person or persons whomsoever, either in Prince Edward Island, or any other British settlement in North America, and to ask, demand, sue for, recover and receive the balances to be found due thereon; and also to ask, demand, sue for, recover, obtain, and receive all and every the debt and debts, sum and sums of money whatsoever, that are now due or shall at any time hereafter become due, or owing to me from any person or persons whomsoever in Prince Edward Island, or any other British settlement in North America, whom it doth, shall, or may concern, or who shall be liable to pay and account for the same; and in case of nonpayment thereof, or of any part thereof, for me and in my name, or in his own name or otherwise, to sue, arrest, attack, prosecute, implead, or otherwise proceed against all and every person and persons whomsoever, as aforesaid, in any court or courts of law or equity in Prince Edward Island, or any other British settlement in North America, where it may be necessary, and to proceed to judgment and execution therein, or otherwise, according to the form and usual practice of such courts or tribunals; and also for me, and in my name, or otherwise, to appear, and my person to represent and personate in all courts, and before all ministers, judges, and magistrates, and otherwise, as may be necessary and as to my said Attorney shall seem meet; and on payment or receipt of any such debts, sum and sums of money, or any of them, or any part thereof respectively, for me and in my name, or otherwise, to make, sign, seal, and execute, all and singular, good and sufficient receipts, releases, acquittances, and other discharges, as may be necessary in the premises, or as may be required. And in case any dispute shall arise touching the payment of any of the said debts, sum or sums of money, or any of them, or any part thereof, or touching the settlement of any account or accounts relating thereto, or in the execution of the powers and authorities hereby given, I do hereby authorize and empower my said Attorney to refer any such dispute or difference to arbitration in the usual way, and to sign, seal, execute, and deliver any agreement, bond, or other instrument of reference, and to abide by and perform the award and determination which may be made in pursuance thereof, and to compel the observance and performance of such award and determination by the other parties thereto respectively; and if expedient and necessary, to accept and take a security or securities for any of the said debt or debts, by instalments, and in cash, goods, bills of exchange, or other mode of payment, or to compound for and take less than the full amount of such of the said debt or debts, whereof full payment cannot be obtained: And generally to transact, manage, conduct, and execute, all and every such further and other lawful acts, deeds, matters, and things, as the said William Pleace shall find needful and necessary for accomplishing all, any, or either of the purposes aforesaid, and that as fully and effectually, to all intents and purposes, as I could do in my own person, hereby giving unto my said Attorney all my full and whole power and authority in the premises; and hereby ratifying and confirming all and whatsoever my said Attorney shall lawfully do or cause to be done, in and about the premises, by virtue and in execution of these presents. In witness whereof, I, the said Edmund Waters, have hereunto set my hand and seal, the ninth day of September, in the fifty-fourth year of the reign of our Sovereign Lord George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and fourteen.

(Signed) E. WATERS, L. S.

Sealed and delivered, (being first duly stamped,) in the presence of,—the words "obtained*" on the second page hereof, to the words, "and generally," being expunged before the execution hereof by the said Edmund Waters,—

(Signed) GEO. BIRNIE,
of Great St. Helens.

* This refers to a clause expunged in the original power, and which therefore is not copied above.

E.

EXTRACTS OF LETTERS OF VARIOUS DATES FROM MR. FADE GOFF TO MESSRS. ALEXANDER BIRNIE AND CO. AND MR. GEORGE BIRNIE OF LONDON, REFERED TO IN THE PRECEDING AFFIDAVIT OF MR. FADE GOFF.

No. 1.

"Charlotte Town, Prince Edward Island,
June 14th, 1816.

"Gentlemen,

Receipt of power of attorney.

"I have the honour to acknowledge the receipt of your favour of 9th of April last on the 5th instant, per Mr. Charles Wright, who arrived safe, after a tedious passage of 47 days; also the powers of attorney therein contained, appointing me your and your Mr. Waters's Agent here, in the room of Mr. William Pleace. I beg to assure you, that I feel most particularly indebted to my kind friends, Mr. Stewart and Mr. G. Birnie, for their recommendation in my favour, and to you, for your confidence in conferring the appointment; and I trust no exertion shall be wanting on my part to endeavour to discharge my duty faithfully to you, and to render you satisfaction.

Mr. Pleace's transactions.

"The only debts he (to wit Mr. Pleace) states to be outstanding against the concern is one in Halifax, to the house of Moody & Co., from whence he has had supplies to amount of about £700; and another, about £30, to a Mr. Hepburn, of the Island of St. Vincent. He states, that he has altogether imported from Halifax, since his appointment, property to amount of upwards of £6000, upon which he considers there has been a profit of £1400 or £1600 towards supporting the establishment.

State of the stock in hand.

"I am proceeding with taking an inventory of the stock on hand, which I hope to get through in a day or two more, and will, by the earliest opportunity, send you a copy of the entire. Many of the goods have remained so long on hand that they are considerably depreciated in value, which, added to the high (war) charges upon them, will, I fear, make it difficult to me to realize near the value at which they are rated; however I shall do all I can to make the most of them; and I shall also exert myself to make you remittances, after the Halifax claim above-stated is extinguished, as you desire. Mr. Pleace's accounts are very much behind-hand, so that I cannot yet judge of them, but he says, since his arrival, not more than £500 to £700 in new balances are outstanding.

Mr. Pleace's accounts and new balances.

Future business.

"I shall be glad, as soon as possible, to be favoured with your determination as to future supplies: a good assortment of saleable articles, such as Mr. George Birnie knows suitable for our consumption, to amount of £5000, I think could be well run off in the autumn and winter, and remitted for in the spring; but should you prefer fully winding up the present concern, before any farther investments are made, I should wish to be informed of it, that I may regulate matters accordingly, and curtail every possible expense."

No. 2.

"Charlotte Town, Prince Edward Island,
July 1, 1816.

Future business.

"I shall be anxious till I am favoured with your further intentions as to business here. I have no doubt but that a snug trade may be continued, which will support the establishment, and leave a moderate profit, if care is taken to lay in the goods well at home, and a suitable assortment forwarded."

No. 3.

"Charlotte Town, Prince Edward Island,
July 8th, 1816.

State of the stock on hand.

"As I mentioned before, many of the articles, to wit of the stock on hand, have suffered from long keeping, and the war charges are very high upon them; but I shall do the very best I can for your advantage.

Future business.

"I should wish to be informed as speedily as may be, if you permit me to make any purchases of suitable goods, here or at Halifax or Newfoundland, particularly in the article of West India produce; without an assortment of these articles, other goods cannot so readily be got off. I also wish to know if you have any objection to my taking any consignments of goods that might offer for your benefit, that did not interfere with sale of goods on hand. I shall always be glad to have your *decided instructions* upon these and every other point that you may deem requisite, which shall be attended to on my part. I shall also be glad of your determination as to shipping goods for the Newfoundland and Halifax markets: at present the prospects are dull.

Sale of timber.

"I have now to advise you that I have sold 150 to 200 tons of M'Nutt's timber (a cargo) to Mr. Peter M'Auslane, at 23*s.* currency per ton, payable by his bill at three months, on Mr. David Rennie of Glasgow, on the whole quantity he wants being delivered: this is the best I could do. I expect also to get the remainder off before the close of the season."

No. 4.

No. 4. relates altogether to a claim made upon the house by a Mr. Charles Stewart.

No. 5.

" Charlotte Town, Sept. 10th, 1816.

" Since mine of 12th July, (to wit, No. 4.) I have been favoured with yours of 7th of May, with the enclosures, which shall be attended to."

Consignment of goods to John Young & Co. Halifax.

After mentioning various improvements, building, &c. on the real estate, Mr. Goff proceeds:—" I have further to acquaint you, that in consequence of the recommendation of Mr. John Young, of the house of John Young and Co. of Halifax, who was here a short time ago, I have forwarded, consigned to their care, the silks, kerseymeres, velvets, indigo, and noyau, for the purpose of exchanging them for articles that are saleable in this market: these would not have gone off here for years, and the declining state of quality of part of the goods made some measure of this nature requisite. I have also forwarded the cases of furniture, which Mr. Young stated he felt confident could be disposed of to some of the Government officers: they have all arrived safe, and I propose following them in a few days, and doing all I can for your interest. If Mr. Pleace had adopted this plan, during the American war, he need not have a shilling's worth of the old stock remaining; but the times and their quality are now seriously altered."

No. 6.

" Halifax, October 5, 1816.

Purchase of goods from John Young and Co. Halifax.

" I beg leave to hand you inclosed M'Auslane on Rennie, Greenock, at 60 days sight, first of exchange, £124 British, being on account of pine timber sold him. In my last I acquainted you I had forwarded the following unsaleable articles, being part of your stock at Prince Edward Island, to this place, addressed to the care of Messrs. John Young and Company, to dispose of to best advantage for your account, viz. silks, velvets, indigo, noyau, kerseymeres, and the household furniture in cases; these articles could not be disposed of at the Island, and several of them were lessening seriously in quality. Messrs. Young and Company assure me, that no exertion should be wanting on their part to get them off at the least possible loss; and I have selected from their stock, which is very general and well laid in, such articles as are suitable for the Island sale, which I shall be able to run off there on terms that will counterbalance the loss on the first mentioned articles. This arrangement was doing the best in my power under the circumstances, and will, I trust, meet your approbation. I have also laid in our winter stock of rum and sugar from Moody and Boyle, payable in spring, the former at 3*s.* 10*d.* per gallon, subject to the long drawback of 1*s.* 1*d.*, and the latter at 60 and 70—two qualities. A stock of this kind was indispensable to running off the other goods, and I trust they will leave profit, and that I shall be punctual in remittances."

Future business.

" I shall also be anxious for your determination as to future business. If you should think fit to permit the present stock to remain as a capital for five or seven years, and to send me out annually supplies of dry goods to amount of about £3000, which should be remitted for in the course of the ensuing year, and also to permit me to keep a smart schooner for the conveyance of our produce to Newfoundland and Halifax, the proceeds of which to be remitted you from these places, I am strongly of opinion that I should be able to make the concern yield you a handsome profit, at least I should feel much pleasure in being permitted to make the trial. I intend sailing to-morrow with the goods for the Island."

No. 7.

A subsequent letter, dated Charlotte Town, November 26, 1816, is entirely filled with suggestions by Mr. Goff as to the best and most profitable mode of carrying on the business of the concern, the most advisable remittances, the connections necessary with Newfoundland and Nova Scotia; for which purpose he recommends John Dunscomb and Company of St. John, and John Young and Company of Halifax, as agents, and with other matters of a similar purport.

No. 8.

" Charlotte Town, Prince Edward Island,
December 5, 1816.

Arrival of goods from Halifax.

" The goods from Halifax arrived safe, and I expect will go off to pretty good account, and I trust cover the loss which must be expected upon those articles forwarded to that place, from their injured state and high price."—John Young and Company had, in the mean time, acquainted Mr. Goff with the fact of many of the silk and woollen goods being stained and moth eaten.—" A singular difference has occurred in the articles contained in the five cases of furniture, as you will perceive by the inclosed list, and the copy of the one handed to me by Mr. Pleace, who says they were not opened after his arrival. I inclose you also a copy of the affidavit of the persons who were employed to open the cases; the original is in my possession. I am quite at a loss to account for the circumstance, which to me is an unpleasant one; the articles that were forthcoming were considerably the worse for wear, as Young and Company state."

Difference in furniture.

Pressing for answers.

Having stated various improvements on the real estate, Mr. Goff proceeds:—" The above-mentioned objects added to the remittances to Halifax, and the nature of the stock transferred to me, puts it out of my power to make you any farther remittances this fall. On that point I trust you will take the subject of my letter of 26th November into consideration, and favour me with your sentiments as early as possible in spring."

No. 9.

Mr. Goff's next letter, of 7th Janua , 1817, referred solely to Mr. Pleace's accounts.

No. 10.

" Charlotte Town, Prince Edward Island,
May 31, 1817.

" I have to acknowledge the receipt of your esteemed favour of 8th November, and continued to 7 April last, per Mr. Wm. Townshend, with the inclosures."

Expenditures on properties, &c.

" Remittances, from the state of the times and of the stock and expenditures on your properties, will be next to impossible this year. I have built a small lighter last winter, for the purpose of conveyance of manure, firewood, &c.; the latter I can by this means obtain much cheaper than by hauling with horses, and I trust she will clear the expense in one season. I do not find much variation of consequence in the list of furniture, save reasonable tear and wear; the articles deficient I found in the trunks, save those accounted for by Mr. George Birnie."

In the foregoing letter was inclosed another from Mr. Goff to Edmund Waters, Esq. dated Charlotte Town, May 23, 1817, and containing as follows:—

Future business.

" I am convinced the establishment would yet do well if regularly and moderately supplied with suitable goods. I think there is little doubt of our agricultural produce supporting a saving price in Newfoundland and Halifax, from which places remittances should be made home."

No. 11.

" Charlotte Town, Prince Edward Island,
December 12, 1817.

Sales of consignment at Halifax.

" I was favoured by the September mail with Mr. George Birnie's letter of 13th September last. I am sorry to acquaint you that the goods which I advised you I forwarded to Halifax have, owing to the pressure of the times, and their decayed state, sold at a very low rate, and great part of the noyau and indigo remain on hand at present unsaleable, unless sacrificed. I fear the whole will not *nett* much more than one-third of the amount at which they appear here in stock; but the chief of the stock handed to me by Mr. Pleace, you may perceive by the list, to be the damaged refuse of the whole of your original investments in this country, which, as I before mentioned to you, might have been realized without much loss during the American War at Halifax, where almost any thing would sell, but that opportunity is lost never to be retrieved."

Balances owing for goods bought at Halifax.

" Owing to the state of the last year, I have not been able to make such remittances to Halifax for the goods I had from thence as I could have wished, and have to make up a considerable balance in the ensuing spring, which I expect to do by sale of timber, which I shall have collected this winter, as well as other produce."

No. 12.

" Charlotte Town, Prince Edward Island,
December 13, 1817.

Future business.

" I wish much for your final and decided determination as to doing business here, which is necessary both for your interest, and to enable me to act as best suits my situation in life."—The remainder of this letter is engrossed by various inquiries and suggestions about doing business for the house.

No. 13.

Anxiety for replies.

On the 14th February, 1818, Mr. Goff again wrote Messrs. A. Birnie and Company, stating, *inter alia*, his anxiety for replies from them to his last letters; and again, on the 13th May, 1818, in reference to Mr. Charles Stewart's claim aforesaid.

N.B. The above are all the letters which the deponent, to the best of his remembrance and belief, has at any time written to A. Birnie and Company, jointly or individually, up to the present day, July 1, 1822, except one other in reference to Mr. Charles Stewart having issued an execution.

(Signed) F. GOFF.

No. 14.

On the 15th September, 1817, Mr. Goff wrote Mr. George Birnie, but kept merely a copy of the heads of the communication, as follows:—

Letter to Geo. Birnie.

" Trade extremely dull here; much difficulty in making remittances to Halifax, for goods *received last fall*. The old goods sent there are likely to leave heavy loss from dullness of times and their bad condition: very anxious for information as to future intentions of the concern as to business: *expenses heavy in clerks, house expenses*, fires, candles, &c. &c.; recommend a wholesale establishment on a limited scale."

No. 15.

Extract from Mr. Goff's Letter to Mr. Geo. Birnie, dated Charlotte Town, Prince Edward Island, July 18, 1818.

" Every day times have been getting more and more difficult; a principal part of the noyau and indigo I sent to Halifax remains still on hand unsaleable, and the goods sold have gone off at a heavy loss from their deteriorated quality, added to the state of the market. A large proportion of the goods had from thence have been expended in rescuing the houses, &c. from decay, and rendering them useful, and the balances due on these goods, in consequence of the great loss on the sales of those forwarded from this, will take all my assiduity to extinguish this fall; but which I hope to accomplish through sales of timber, oatmeal, &c. here. Collection of debts to any extent has been, from the causes I have stated, impracticable; and I clearly see it will take a length of time before it will be possible to effect this object."

Sales of consignment at Halifax.

Expenditure on houses.

Balances due at Halifax.

The cargo of timber mentioned in Messrs. Birnie and Company's letter which I shipped last year, I purchased from Ewen Cameron, and had to give him bills for its amount, therefore could not send the amount to them. The transaction left a profit of about £50, which appears in their books.

F.

EXTRACT OF A LETTER TO MR. GOFF FROM MR. GEORGE BIRNIE, DATED LONDON, SEPTEMBER 18, 1817.

" Dear Sir,

" My father desires me to state in my letter to you, that, in consequence of Mr. Waters being in France with his family on a tour, he will not be able to forward you the necessary documents respecting Mr. Cambridge's action before next month's packet. Counsel's opinion will be sent out on the matter.

" I am also to state, that it is their desire that you should dispose of the entire stock on hand in the way you have mentioned, in the course of the fall; and they leave all matters, in dispute or otherwise, relative to the concern entirely to your own judgment, trusting that you will adopt such means as may be the most to their advantage." The residue of this letter is taken up with a further allusion to Mr. Cambridge's claim, and some private affairs of Mr. George Birnie.

General direction.

For the extracts from Mr. Goff's letter to A. Birnie and Company, of December the 12th, 1817, see ante, page 14.

Whereupon, it is ordered by the said Court, that the said rule so obtained by the said defendant, Edmund Waters, in this cause be discharged.

By the Court,

FADE GOFF, C. C.

Trinity Term, 3 Geo. 4, A. D. 1822.